

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**CASSANDRA LUSTER et al.**

**Plaintiffs,**

**v.**

**CITY OF DALLAS, ET AL.**

**Defendants.**

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**CIVIL ACTION NO.**

**3:16-CV-0396-B**

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**APPENDIX FOR BRIEF FOR PLAINTIFFS' MOTION FOR LEAVE TO AMEND  
PLAINTIFFS' EXPERT DESIGNATION OF SCOTT BELSHAW**

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Respectfully submitted,

**TED B. LYON & ASSOCIATES, P.C.**

By: /s/ Charles A. Bennett

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**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing document was duly served pursuant to the Texas Rules of Civil Procedure via Electronic Mail/eServe on the following counsel of record on this 12<sup>th</sup> day of December 2017.

/s/ Charles A. Bennett

CHARLES A. BENNETT

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1	VIDEOTAPED DEPOSITION OF BRANDON DAVIS		1	S T I P U L A T I O N	
2	October 18, 2017		2	The videotaped deposition of BRANDON DAVIS,	
3	11:40 a.m. - 1:22 p.m.		3	called as a witness at the instance of the Plaintiffs,	
4	IN THE UNITED STATES DISTRICT COURT		4	taken pursuant to all rules applicable to the Federal	
5	FOR THE NORTHERN DISTRICT OF TEXAS		5	Rules of Civil Procedure by Notice on the 18th day of	
6	DALLAS DIVISION		6	October, 2017, at Regus, 200 Prosperity Drive,	
7	-----		7	Knoxville, Tennessee, before David L. Kelly, Licensed	
8	CASSANDRA LUSTER, et al,	)	8	Court Reporter, pursuant to stipulation of counsel.	
9	Plaintiffs,	)	9	It being agreed that David L. Kelly, Licensed	
10	vs.	) NO.	10	Court Reporter, may report the videotaped deposition in	
11	CITY OF DALLAS, et al,	) 3:16-cv-00396-G	11	machine shorthand, afterwards reducing the same to	
12	Defendants.	)	12	typewriting.	
13	-----		13	All objections except as to the form of the	
14	APPEARANCES:		14	questions are reserved to on or before the hearing.	
15	FOR THE PLAINTIFFS:		15	It being further agreed that all formalities	
16	CHARLES A. BENNETT, ESQ.		16	as to notice, caption, certificate, transmission,	
17	Attorney at Law		17	etcetera, including the reading of the completed	
18	Ted B. Lyons & Associates		18	videotaped deposition by the witness and the signature	
19	Town East Tower, Suite 525		19	of the witness, are expressly waived.	
20	18601 LBJ Freeway		20		
21	Dallas, Texas 75150		21		
22	FOR THE DEFENDANTS:		22		
23	MICHAEL B. JONES, ESQ.		23		
24	Attorney at Law		24		
25	Canterbury, Gooch, Surratt, Shapiro,		25		
	Stein & Gaswirth				
	5005 LBJ Freeway, Suite 1000				
	Dallas, Texas 75244				
	ALSO PRESENT: Matt Poplin, Videographer				
				</	

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<p>1 <b>turn it out, they clip the pump.</b></p> <p>2 <b>You know, so it's either going to</b></p> <p>3 <b>do -- it's probably going to do damage both ways:</b></p> <p>4 <b>Their RV, our pump. So we do a property incident</b></p> <p>5 <b>report. We get their information. We put everything</b></p> <p>6 <b>down. It comes into our home office. They handle it</b></p> <p>7 <b>from there.</b></p> <p>8 Q. All right. And by "pumps", you mean like</p> <p>9 one of those gas pumps, right?</p> <p>10 <b>A. Yeah, gas pump.</b></p> <p>11 Q. So you've have got -- I guess in that</p> <p>12 situation there's two types of property damage. One is</p> <p>13 to the customer's property, right?</p> <p>14 <b>A. Correct.</b></p> <p>15 Q. And the second one would be to Pilot's</p> <p>16 property, right?</p> <p>17 <b>A. Correct.</b></p> <p>18 Q. Okay. And let's say -- I guess, Pilot</p> <p>19 would become aware of that property damage in a couple</p> <p>20 of different ways, and one is the customer comes in and</p> <p>21 says, "Hey, I just hit the pump." Is that fair?</p> <p>22 <b>A. That's fair.</b></p> <p>23 Q. And then the second one would be maybe</p> <p>24 some other customer comes by and says, "Hey, it looks</p> <p>25 like somebody hit the pump." Is that fair?</p>	<p>1 <b>A. Fair.</b></p> <p>2 Q. Okay. So let's say somebody is</p> <p>3 trespassing or you don't really want them on there or</p> <p>4 just two customers get in a fight and</p> <p>5 somebody -- somebody gets injured, is that something we</p> <p>6 fill out a customer incident report for?</p> <p>7 <b>A. We would.</b></p> <p>8 Q. Okay. And that's because somebody was</p> <p>9 injured, correct?</p> <p>10 <b>A. Right.</b></p> <p>11 Q. And let's say -- and this is -- were you</p> <p>12 ever on the property when there was an arrest made in</p> <p>13 Dallas on the Pilot property?</p> <p>14 <b>A. I'm sure I was.</b></p> <p>15 Q. Is that something we'd fill out a report</p> <p>16 for?</p> <p>17 <b>A. For arrests?</b></p> <p>18 Q. Yeah.</p> <p>19 <b>A. Yeah. That would be something that</b></p> <p>20 <b>normally we would fill out a report for, yes.</b></p> <p>21 Q. Is that -- which one of these reports</p> <p>22 would that be, customer report, employee incident or a</p> <p>23 property damage report?</p> <p>24 <b>A. We'd probably put it under customer</b></p> <p>25 <b>report.</b></p>
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<p>1 <b>A. That's fair.</b></p> <p>2 Q. And then other way would be an employee</p> <p>3 comes by and notices it; is that right?</p> <p>4 <b>A. Correct.</b></p> <p>5 Q. Can you think of any other ways that you</p> <p>6 guys may become aware of the property damage?</p> <p>7 <b>A. No. Those are the -- those are probably</b></p> <p>8 <b>the main three: We see it, somebody sees it, or they</b></p> <p>9 <b>tell us.</b></p> <p>10 Q. Okay. All right. And then let's talk</p> <p>11 about customer incident reports. When -- when is it</p> <p>12 that a GM like you knows that I've got a situation</p> <p>13 where I need to pull up this customer incident report</p> <p>14 and fill it out?</p> <p>15 <b>A. Those would be your slip and falls, your</b></p> <p>16 <b>trips. Basically any time somebody is injured on the</b></p> <p>17 <b>property we fill out a report.</b></p> <p>18 Q. Now, we mentioned earlier a little bit</p> <p>19 about how -- I think this Dallas one I've heard some</p> <p>20 stories about having some people that come on that</p> <p>21 aren't really customers, and you don't really want them</p> <p>22 on there. They're kind of trespassers, right?</p> <p>23 <b>A. Correct.</b></p> <p>24 Q. And that happens from time to time in any</p> <p>25 business, fair?</p>	<p>1 Q. All right. So I've give got slip and</p> <p>2 fall, trip and fall, assault, and arrest. Can you</p> <p>3 think of anything else that we would fill out a</p> <p>4 customer incident report for?</p> <p>5 Maybe we can do it this way: Is it any</p> <p>6 time a customer gets injured? Is that fair?</p> <p>7 <b>A. It doesn't have to be just for injury,</b></p> <p>8 <b>though, I don't think.</b></p> <p>9 Q. Okay. Explain that.</p> <p>10 <b>A. I know that's one reason to fill it out,</b></p> <p>11 <b>but you may fill it out for -- I'm trying to remember</b></p> <p>12 <b>the report, exactly how it looks whenever I used to do</b></p> <p>13 <b>it, but the main reason you did it is normally for</b></p> <p>14 <b>injury, yes.</b></p> <p>15 Q. Okay. One, you might have a situation</p> <p>16 where a customer comes in and claims they were injured,</p> <p>17 and you don't really know that at that point, right?</p> <p>18 <b>A. Right.</b></p> <p>19 Q. And so would you fill out a report then</p> <p>20 even if you're not really sure if it happened or not;</p> <p>21 is that fair?</p> <p>22 <b>A. Yeah. You still should fill out the</b></p> <p>23 <b>report, yes, sir.</b></p> <p>24 Q. Okay. So for injuries and claimed</p> <p>25 injuries; is that fair?</p>

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<p>1 Q. Now, we talked about when and kind of why</p> <p>2 you do these incident reports, and we talked about kind</p> <p>3 of the minimum requirements for like if somebody's</p> <p>4 injured or they claim they're injured.</p> <p>5 Do you agree with me that the reasons</p> <p>6 we're doing these incident reports is so that, you</p> <p>7 know, the GM knows what's going on in the store, and</p> <p>8 the regional manager knows what's going on in the</p> <p>9 store, and Pilot itself knows so there's something in</p> <p>10 writing about the incident? Is that fair?</p> <p>11 A. That's fair.</p> <p>12 Q. And if there's a problem that we can fix,</p> <p>13 whether it comes from the GM or the regional manager or</p> <p>14 Pilot above that, right?</p> <p>15 A. Correct.</p> <p>16 Q. And so if there's something happening</p> <p>17 that there should be an incident report and an incident</p> <p>18 report isn't done, that that's a -- that's a failure of</p> <p>19 whoever was supposed to fill out that report. Do you</p> <p>20 agree with that?</p> <p>21 A. I agree with that.</p> <p>22 MR. JONES: Objection to form.</p> <p>23 BY MR. BENNETT:</p> <p>24 Q. Because if there's -- if that report is</p> <p>25 not done and it should have been done, and, you know,</p>	<p>1 Pilots depends on and relies on their GMs to do, right?</p> <p>2 A. Correct.</p> <p>3 Q. And if the GM isn't doing something,</p> <p>4 isn't filling out an incident report when they should,</p> <p>5 then that's a failure on the GM's part to do something</p> <p>6 that's important to their job, right?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Do you agree that the -- I think you kind</p> <p>9 of mentioned this earlier, is that the -- keeping those</p> <p>10 panhandlers in check in the back part of the lot and</p> <p>11 making sure that things are safe for these truck</p> <p>12 drivers, that's obviously a part of the off-duty</p> <p>13 security guard's job, right?</p> <p>14 A. Correct.</p> <p>15 Q. And that's -- that is a part of Pilot's</p> <p>16 success as a company. Do you agree with that?</p> <p>17 MR. JONES: Objection. Form.</p> <p>18 THE DEPONENT: No, I don't think it has</p> <p>19 anything to do with Pilot's success. I think it's</p> <p>20 more of a store-by-store basis on -- like, that</p> <p>21 store has off-duty police officers --</p> <p>22 BY MR. BENNETT:</p> <p>23 Q. Right.</p> <p>24 A. -- for that reason, to keep the</p> <p>25 panhandlers off the back lot. I don't think that has</p>
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<p>1 Pilot doesn't have any knowledge of it, they can't fix</p> <p>2 it, right?</p> <p>3 A. Correct.</p> <p>4 Q. And that can cause a safety problem or,</p> <p>5 you know, something that could be fixed and not be</p> <p>6 fixed and can cause it to be less safe, right?</p> <p>7 MR. JONES: Objection. Form.</p> <p>8 THE DEPONENT: Let's say if it's just</p> <p>9 people aren't in the know and should be in the</p> <p>10 know.</p> <p>11 BY MR. BENNETT:</p> <p>12 Q. And they can't -- they can't say, "Hey,</p> <p>13 there's a problem down in that -- in that Dallas Flying</p> <p>14 J," or whatever it is. "We need to go and fix that,"</p> <p>15 right? Because they don't know, right?</p> <p>16 A. Yeah, depending on what the -- depending</p> <p>17 on what the issue is.</p> <p>18 MR. JONES: Objection form.</p> <p>19 BY MR. BENNETT:</p> <p>20 Q. Well, if it's an issue that arises above</p> <p>21 like we talked about earlier where an incident report</p> <p>22 should be done and it's not done, you know, that's why</p> <p>23 you do the reports, right?</p> <p>24 A. Yeah, to make those people aware.</p> <p>25 Q. Okay. And -- and that's something that</p>	<p>1 anything to do with Pilot's success as a company.</p> <p>2 Q. Okay. I may have made it too broad</p> <p>3 there. Let's talk about just the Flying J in Dallas.</p> <p>4 It's part of that Flying J's success. Would you agree</p> <p>5 with that?</p> <p>6 MR. JONES: Objection. Form.</p> <p>7 THE DEPONENT: Again, I don't think it</p> <p>8 has anything to do with their success. I think it</p> <p>9 has to do more with making sure that the building</p> <p>10 and customers and the people that work there are</p> <p>11 safe.</p> <p>12 BY MR. BENNETT:</p> <p>13 Q. Well, if -- if the word gets out that</p> <p>14 it's not safe to go to that Flying J in Dallas and</p> <p>15 truck drivers and customers stop showing up, then you'd</p> <p>16 agree that that could affect the success of that Flying</p> <p>17 J in Dallas; is that fair?</p> <p>18 A. That's fair.</p> <p>19 Q. Okay. Do you agree that the job that</p> <p>20 that officer is doing for Flying J is different than</p> <p>21 their job as a police officer, if you know?</p> <p>22 MR. JONES: Objection. Form.</p> <p>23 THE DEPONENT: Do I think the job is</p> <p>24 different?</p> <p>25 BY MR. BENNETT:</p>

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<p>1 Q. Did anybody ever complain that Officer 2 Tolerton was coming across the street and roughing 3 people up over there? 4 <b>A. No.</b> 5 Q. Did you ever see Tolerton rough anybody 6 up on the Flying J property? 7 MR. JONES: Objection. Form. 8 THE DEPONENT: Did I ever see him? No. 9 BY MR. BENNETT: 10 Q. Did you ever hear about it? 11 <b>A. There was one incident where another one</b> 12 <b>of my managers -- I think Tolerton had tackled somebody</b> 13 <b>in the front on the parking lot. I didn't see it.</b> 14 <b>So --</b> 15 Q. Okay. Do you know if Tolerton was hurt 16 in that incident? 17 <b>A. His hip was hurt, yes, sir.</b> 18 Q. Okay. Do you know about when this 19 incident was? 20 <b>A. No. I don't remember the date.</b> 21 Q. Do you know if the person that either 22 tackled him or was tackled, do you know if that person 23 was injured? 24 <b>A. He was not.</b> 25 Q. Okay. If there was -- we talked earlier</p>	<p>1 <b>A. I wouldn't know.</b> 2 MR. JONES: Objection. Form. 3 BY MR. BENNETT: 4 Q. Okay. All right. So what did you hear 5 about this incident? What happened? 6 <b>A. I don't even remember -- I don't even</b> 7 <b>remember what the incident was. I just remember -- I</b> 8 <b>can remember Tolerton's hip being hurt, him getting</b> 9 <b>into other car.</b> 10 <b>I know Agence Smith was the other manager</b> 11 <b>that was involved, and I can remember him telling me</b> 12 <b>that he went out there and helped hold the guy down so</b> 13 <b>that Tolerton could get out from under him.</b> 14 Q. Okay. Agent Smith? 15 <b>A. Agence. A-g-e-n-c-e, Agence.</b> 16 Q. Okay. And that's his first name? 17 <b>A. Yes, sir.</b> 18 MR. JONES: Deceased. 19 THE DEPONENT: He passed away. 20 BY MR. BENNETT: 21 Q. What happened? Do you know? 22 <b>A. I got a call a few months ago from a guy</b> 23 <b>that worked at the store and asked me if I was going to</b> 24 <b>be able to make it down for the funeral, and I told</b> 25 <b>him, you know, I can't. It's too far, and I've got a</b></p>
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<p>1 about when to do those incident reports. If there was 2 a situation where there was an altercation between an 3 off-duty police officer and somebody on Flying J's 4 property and either the officer or the other person was 5 hurt, is that an instance we would need to do a report? 6 <b>A. Yes, sir.</b> 7 Q. Do you know if a report was done in that 8 incident? 9 <b>A. There was not.</b> 10 Q. Okay. Do you know why? 11 <b>A. Just didn't do one.</b> 12 Q. Who was the GM on duty at that time? 13 <b>A. I was.</b> 14 Q. At the time of the tackling? 15 <b>A. I believe so, yes, sir.</b> 16 Q. Oh, I thought you heard about the 17 tackling from somebody else? 18 <b>A. I didn't see it. I was at the store.</b> 19 Q. I'm sorry. Okay. I misunderstood. So 20 you were on duty at the time of this -- this tackling 21 incident? 22 <b>A. Yes, sir.</b> 23 Q. And if I told you that we think it 24 happened in November of 2014, does that -- do you have 25 any reason to argue about that?</p>	<p>1 <b>bunch of stuff going on. But I think they said he had</b> 2 <b>a heart attack and passed away.</b> 3 Q. Was he older or how old was he? 4 <b>A. No. He was a big old dude, healthy, from</b> 5 <b>what I thought.</b> 6 Q. Like -- 7 <b>A. It's crazy, just a shot -- just one of</b> 8 <b>those freak things that --</b> 9 Q. And this was this year earlier? 10 <b>A. Yes, sir, since I've been in Chattanooga,</b> 11 <b>and I got to Chattanooga last year. So --</b> 12 Q. Okay. So Mr. Smith came to you 13 and -- oh, Mr. Smith held the guy down that he tackled 14 or was tackled by Tolerton, and let's clear that up. 15 Do you know which it was that -- 16 <b>A. I don't know.</b> 17 Q. Okay. So Agence -- Agence Smith, 18 Mr. Smith, held the guy down while Tolerton got up; is 19 that your understanding? 20 <b>A. That's my understanding.</b> 21 Q. Do you know -- did Mr. Smith explain what 22 the incident was about? 23 <b>A. Huh-uh, not that I can remember. I'm</b> 24 <b>sure he did, but that's -- I just don't remember.</b> 25 Q. Did you ever talk to Tolerton about it?</p>



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<p>1 <b>A. No.</b></p> <p>2 Q. Do you know who the person was, the other</p> <p>3 person that was involved?</p> <p>4 <b>A. I don't know.</b></p> <p>5 Q. Had you ever seen him before?</p> <p>6 <b>A. No.</b></p> <p>7 Q. Was he one of the panhandlers?</p> <p>8 <b>A. Yeah, I don't know.</b></p> <p>9 Q. Okay. Did Tolerton get taken away by</p> <p>10 ambulance?</p> <p>11 <b>A. No.</b></p> <p>12 Q. You said another car came and picked him</p> <p>13 up. Do you know --</p> <p>14 <b>A. I think it was another police car.</b></p> <p>15 Q. So he -- he left by police car?</p> <p>16 <b>A. Correct.</b></p> <p>17 Q. Did you know -- did Mr. Smith know that</p> <p>18 Tolerton was hurt?</p> <p>19 <b>A. I don't -- I don't know. I think after</b></p> <p>20 <b>he got up he radioed to a partner, and that's who come</b></p> <p>21 <b>and got him.</b></p> <p>22 Q. Oh, called --</p> <p>23 <b>A. Yeah, Tolerton radioed to somebody else</b></p> <p>24 <b>to come get him, to the best of my recollection.</b></p> <p>25 Q. So you think Tolerton may have gotten on</p>	<p>1 guy is taken away and another guy is arrested that an</p> <p>2 incident report should probably be done, right?</p> <p>3 <b>A. Should have been done.</b></p> <p>4 Q. Okay. And was that going to be -- should</p> <p>5 that have been your responsibility or Mr. Smith's?</p> <p>6 <b>A. It should have been mine.</b></p> <p>7 Q. Okay. Do you know why you didn't do it</p> <p>8 that day?</p> <p>9 <b>A. No.</b></p> <p>10 Q. Was it just a --</p> <p>11 <b>A. Just a failure on my part.</b></p> <p>12 Q. Fair enough. Did you -- were you ever</p> <p>13 reprimanded for that by the regional manager or anybody</p> <p>14 else?</p> <p>15 <b>A. No.</b></p> <p>16 Q. Were you ever talked to about, "Hey, this</p> <p>17 is something we need -- we need to do the incident</p> <p>18 report in the future?"</p> <p>19 <b>A. Have I had those conversations in my</b></p> <p>20 <b>career? Yes, but that one in particular, no.</b></p> <p>21 Q. How many times have -- have you had the</p> <p>22 conversations with other people about, "Hey, you know,</p> <p>23 Mr. Davis, you need to do an incident report in the</p> <p>24 future on something like this?"</p> <p>25 <b>A. Normally it's not them having the</b></p>
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<p>1 his police radio. It wouldn't have been a</p> <p>2 walkie-talkie?</p> <p>3 <b>A. It wouldn't have been ours.</b></p> <p>4 Q. So you think Tolerton got on the police</p> <p>5 radio and called in some help, and somebody picked him</p> <p>6 up, right?</p> <p>7 <b>A. Correct.</b></p> <p>8 Q. And do you know what Mr. Smith did with</p> <p>9 the guy that he held down?</p> <p>10 <b>A. I don't remember. I'm sure he went to</b></p> <p>11 <b>jail.</b></p> <p>12 Q. Okay. So you think that guy was probably</p> <p>13 arrested?</p> <p>14 <b>A. Correct.</b></p> <p>15 Q. Did any of your employees see that</p> <p>16 incident, that you recall?</p> <p>17 <b>A. No.</b></p> <p>18 Q. Do you know -- besides that tackling</p> <p>19 incident, do you know of any other incidents that</p> <p>20 Tolerton was involved in where he either was in an</p> <p>21 altercation with somebody or he had somebody arrested</p> <p>22 while he was working for the Flying J?</p> <p>23 <b>A. No.</b></p> <p>24 Q. And I think we agreed earlier that this</p> <p>25 is the type of incident, this tackling thing, where one</p>	<p>1 <b>conversation. It's me calling and asking if I need to</b></p> <p>2 <b>do one.</b></p> <p>3 Q. About how many times do you think you</p> <p>4 called and asked somebody for advice on whether you</p> <p>5 should do a report on an incident?</p> <p>6 <b>A. Probably two or three times that I have</b></p> <p>7 <b>called that I wasn't sure or it was a new situation for</b></p> <p>8 <b>me.</b></p> <p>9 Q. And are you calling your regional manager</p> <p>10 at this point or somebody else?</p> <p>11 <b>A. Yes, I called my regional.</b></p> <p>12 Q. All right. And were these -- any of</p> <p>13 these two or three times while you're working at the</p> <p>14 Dallas Flying J?</p> <p>15 <b>A. No.</b></p> <p>16 Q. When were they, if you can remember?</p> <p>17 <b>A. Let me think. It probably would have</b></p> <p>18 <b>been early in my career, like, at one of my early</b></p> <p>19 <b>stores, Sulfur Springs maybe. I probably would have</b></p> <p>20 <b>called, you know, Brad or somebody and asked, but by</b></p> <p>21 <b>the time I got -- I didn't have to call in Dallas at</b></p> <p>22 <b>all.</b></p> <p>23 Q. And you're a regional manager now. So is</p> <p>24 this something that you -- you get calls like this from</p> <p>25 your GMs on occasion?</p>